

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PHOENIX LICENSING, L.L.C., an Arizona Limited Liability Company, and LPL LICENSING, L.L.C., a Delaware Limited Liability Company;

Plaintiffs,

vs.

CHASE MANHATTAN MORTGAGE CORPORATION, a New Jersey corporation; JP MORGAN CHASE BANK, N.A., a Delaware corporation; CITIBANK., N.A., a national bank association; CITIBANK USA, N. A., a limited purpose credit card bank; CITIBANK (SOUTH DAKOTA), N. A., a limited purpose credit card bank; CITIMORTGAGE, INC., a New York corporation; CITIGROUP, INC. a Delaware corporation; CITI ASSURANCE SERVICES, INC., a Maryland corporation; COUNTRYWIDE HOME LOANS, INC., a New York corporation; COUNTRYWIDE INSURANCE SERVICES, INC., a California corporation; DISCOVER FINANCIAL SERVICES,, a Delaware corporation; DISCOVER BANK, a Delaware corporation; GMAC Mortgage, L.L.C. (f/k/a GMAC Mortgage Corporation), a Delaware corporation; GMAC INSURANCE MARKETING, INC., a Missouri corporation; GMAC BANK, a Utah industrial loan corporation; LIBERTY LIFE INSURANCE COMPANY, a South Carolina corporation; RESPONSE WORLDWIDE INSURANCE COMPANY, an Ohio corporation; DIRECT RESPONSE CORPORATION, a Delaware corporation; WARNER INSURANCE COMPANY, a Illinois corporation; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a Illinois corporation; STATE FARM BANK, F.S.B., a Federal Savings Association; USAA Federal Savings Bank, a FEDERAL SAVINGS BANK; USAA SAVINGS BANK, a Nevada corporation; UNITED SERVICES AUTOMOBILE ASSOCIATION, a reciprocal inter insurance exchange.

CASE NO. 2:07-cv-387 (TJW/CE)

Jury Trial Demanded

Defendants.

DOCKET CONTROL ORDER

In accordance with the case status conference held herein on the 9th day of December, 2009, it is hereby **ORDERED** that the following schedule of deadlines is in effect until further order of this Court:

Date Due	Event
January 4, 2011	9:00 a.m. JURY SELECTION
December 13, 2010	1:30 p.m. PRETRIAL CONFERENCE All pending motions will be heard. Lead trial counsel must attend the pretrial conference.
December 8, 2010	Parties to file estimates of the amount of time they request at jury selection and trial for (1) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.
December 8, 2010	Motions in Limine due. The parties are directed to confer and advise the Court on or before 3:00 o'clock p.m. the day before the pre-trial conference which paragraphs are agreed to and those that need to be addressed at the pre-trial conference.
December 8, 2010	Pretrial Objections due.
December 8, 2010	Objections to Rebuttal Deposition Testimony due.
December 3, 2010	Rebuttal Designations and Objections to Deposition Testimony due. Cross examination line and page numbers to be included. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.
November 26, 2010	Pretrial Disclosures due, including exchange of trial exhibit lists. Video and Stenographic Deposition Designation due. Each party who proposes to offer deposition testimony shall file a disclosure identifying the line and page numbers to be offered.
November 26, 2010	Joint Pretrial Order, Joint Proposed Jury Instructions with citation to authority and Form of the Verdict for jury trials due. Proposed Findings of Fact and Conclusions of Law with citation to authority for issues tried to the bench. Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court and email the Court Reporter.
November	Second mediation to be completed.

Date Due	Event
26, 2010	
November 26, 2010	Reply for Dispositive Motions (including <i>Daubert</i> motions) due.
November 12, 2010	Response to Dispositive Motions (including <i>Daubert</i> motions) due. Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> motions, shall be due in accordance with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances.</u>
October 22, 2010	Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions) due. Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances.</u>
October 22, 2010	Parties to Identify Rebuttal Trial Witnesses.
October 14, 2010	Parties to Identify Trial Witnesses; Amend Pleadings (after <i>Markman</i> Hearing). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, except as provided in Patent Rule 3-6, if the amendment would effect infringement contentions or invalidity contentions, a motion must be made pursuant to Patent Rule 3-6 irrespective of whether the amendment is made prior to this deadline.
October 14, 2010	Expert Discovery Deadline (see Fact Discovery Deadline below).
October 4, 2010	Rebuttal expert witness reports due. Refer to Local Rules for required information.
September 15, 2010	Expert witness reports due for parties with burden of proof. Refer to Local Rules for required information.
September 15, 2010	Fact Discovery Deadline (see Expert Discovery Deadline above).
August 20, 2010	Comply with P.R.3-7 - Furnishing documents and privilege logs pertaining to willful infringement.
August 13, 2010	<i>Markman</i> hearing and hearing on any Motion for Summary Judgment of Indefiniteness at 9:00 a.m.
July 30, 2010	Tutorials due. Deadline for parties, if they desire, to provide Court with tutorials concerning technology involved in patent. If a technical advisor has been appointed, each party that provides a tutorial shall provide a copy to the advisor.
July 30, 2010	P.R. 4-5(d) Chart due. Parties shall jointly submit a claim construction chart on computer disk in WordPerfect format or in such other format as the Court may direct in accordance with P.R. 4-5(d).
	Reply to Motion for Summary Judgment of Indefiniteness due. The filing

Date Due	Event
	<p>party is to provide the Court with 2 binders containing their brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p> <p>Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). <u>Motions to extend page limits will only be granted in exceptional circumstances.</u></p>
July 16, 2010	<p>Parties to file a notice with the Court stating the estimated amount of time requested for the <i>Markman</i> Hearing. The Court will notify the parties if it is unable to accommodate this request.</p> <p>Comply with P.R. 4-5(c) - Reply brief and supporting evidence due re response to claim construction. The filing party is to provide the Court with 2 binders containing their reply brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p> <p>Response to Motion for Summary Judgment of Indefiniteness due. The filing party is to provide the Court with 2 binders containing their brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p> <p>Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). <u>Motions to extend page limits will only be granted in exceptional circumstances.</u></p> <p>Add any inequitable conduct allegations to pleadings. It is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings prior to this date. Thereafter, it is necessary to obtain leave of Court to add inequitable conduct allegations to pleadings.</p>
July 2, 2010	<p>Comply with P.R. 4-5(b) - Responsive brief and supporting evidence due to party claiming patent infringement. The filing party is to provide the Court with 2 binders containing their <i>Markman</i> brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their <i>Markman</i> brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.</p> <p>Motion for Summary Judgment of Indefiniteness due. The moving party is to provide the Court with 2 binders containing their brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and</p>

Date Due	Event
	bound in notebook format with exhibits to the advisor. Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). <u>Motions to extend page limits will only be granted in exceptional circumstances.</u>
June 11, 2010	Comply with P.R. 4-5(a) - The party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. The filing party is to provide the Court with 2 binders containing their <i>Markman</i> brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their <i>Markman</i> brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor. Briefing shall comply with Local Rules CV-7 and 56 and Patent Rule 4-5(e). <u>Motions to extend page limits will only be granted in exceptional circumstances.</u>
May 28, 2010	Discovery Deadline - Claim Construction Issues.
May 28, 2010	Respond to Amended Pleadings.
May 21, 2010	Deadline for parties to inform court if they have no disputes regarding privileged documents or information (<i>See</i> Discovery Order Paragraph [12]).
April 15, 2010	Amended Pleadings (pre-claim construction) due from all parties. It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, if the amendment would affect infringement contentions or invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.
April 15, 2010	Proposed Technical Advisors due. Parties to provide name, address, phone number, and curriculum vitae for up to three agreed technical advisors and information regarding the nominees' availability for <i>Markman</i> hearing or a statement that they could not reach an agreement as to any potential technical advisor. If the parties cannot agree on a technical advisor, they shall not submit any proposed technical advisors to the Court.
April 15, 2010	Comply with P.R. 4-3 - Filing of Joint Claim Construction and Prehearing Statement.
March 15, 2010	Comply with P.R. 4-2 - Exchange of Preliminary Claim Constructions and Extrinsic Evidence. Privilege Logs to be exchanged by parties.
March 15, 2010	First mediation to be completed. A mediator will be appointed in this cause. The parties are to submit the name and address of an agreed mediator within

Date Due	Event
	ten days of the date of this order. Mediation shall be conducted in accordance with the Court-Annexed Mediation Plan. <i>See Appendix H to Local Rules</i> , available on the Court's website at www.txed.uscourts.gov .
March 15, 2010	Additional Disclosures Due (<i>see Discovery Order Paragraph [2(b)-(c)]</i>).
February 26, 2010	Comply with P.R. 4-1 - Exchange Proposed Terms and Claim Elements for Construction.
January 22, 2010	<p>Defendant shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.</p> <p>Defendant shall assert any counterclaims except inequitable conduct. After this deadline, leave of Court must be obtained to assert any counterclaims except inequitable conduct.</p>
January 8, 2010	Plaintiff shall join additional parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.
December 23, 2009	Parties to submit Agreed Protective Order. If parties cannot agree, parties will jointly file a proposed protective order including competing provisions where agreement could not be reached (<i>see Discovery Order Paragraph [11]</i>). For any production to be made before the Court has entered a protective order, the parties agree to negotiate in good faith regarding the manner of production and protections to be afforded to the production by the receiving party(ies) thereto.
December 23, 2009	Agreed docket control and discovery orders due.

In the event that any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the Court will assume that the party has no opposition.” Local Rule CV-7(e) provides that a party opposing a motion has 15 days in which to serve and file supporting documents and briefs after which the Court will consider the submitted motion for decision.

OTHER LIMITATIONS

- (a) All depositions to be read into evidence as part of the parties' case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.
- (b) The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (i) The fact that there are motions for summary judgment or motions to dismiss pending;
- (ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

SIGNED this 30th day of December, 2009.



CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE